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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

**Benton Foundation, *et al.*
Opposition to Request for a Stay**

Filed by the Benton Foundation, Edgemont Neighborhood Coalition, Consumer Interest
Research Institute, and the Center for Media Education ("Benton, *et al.*")

July 17, 1997

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I. Introduction

On July 3, 1997 Southwestern Bell Telephone Company and Pacific Bell/Nevada Bell ("Petitioners") filed a joint petition¹ for a stay of the Commission's Universal Service Order.² The Petitioners seek a stay of the entire Order, or, at least, to block discounts aimed for K-12 schools, libraries, and health care providers and provisions for low-income, Lifeline consumers. In determining whether to stay the effectiveness of one of its orders, the Commission must consider the four-factor test established in *Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958), as modified in *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977) ("*Holiday Tours*"). Under that test, petitioners must demonstrate that: (1) they are likely to succeed on the merits on review; (2) they would suffer irreparable injury absent a stay; (3) a stay would not substantially harm other interested parties; and (4) a stay would serve the public interest. As an interested party and commenter in these proceedings, Benton, *et al.* offer the following objections to the petition for a stay.

- In regards to the petition for stay of the entire Order, the Petitioners have offered little evidence for a stay of this breathe and have not addressed the four-point test of *Holiday Tours*. Since the Petitioners have not substantiated claims that (1) they will succeed on the merits on review, (2) that they will suffer irreparable injury absent a stay, (3) no other

¹ Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell. Joint Petition for a Stay Pending Judicial Review. CC Docket No. 96-45. Filed July 3, 1997. ("Petition")

² Federal-State Joint Board on Universal Service. CC Docket No. 96-45. Report and Order 97-157 (released May 8, 1997) ("Universal Service Oder" or "Order")

parties will be harmed by a stay, or (4) that a stay is in the public interest, the Commission should dismiss out of a hand a stay of the entire Order.

- In regards to the Petitioner's more narrowly tailored claims, the Petitioners are unlikely to succeed on the merits on review. In regards to discounts for schools, libraries, and health care providers outlined in Section 254(h) of the Telecommunications Act of 1996, it is the plain intent of Congress to connect classrooms, not just to reach the school house door.
- Discount provisions for schools, libraries, and health care providers are not burdensome to Petitioners as no funds have been collected or distributed yet and the Commission's rules do not call for collection or distribution until January 1, 1998.
- A stay of the provisions for schools, libraries and health care providers could harm these eligible entities by halting their technology inventory/assessments and other preparations under way as required by the Commission's rules.
- A stay of "no disconnect"/deposit rules will do harm to Lifeline subscribers. "No disconnect"/deposit rules are an important factor in advancing universal service goals and

consistent with the Telecommunications Act of 1996. They are essential to the education, health, and safety of low-income consumers by helping to guarantee continuous connections to public schools, health care providers, and emergency services.

Benton, a nonpartisan, private foundation committed to strengthening public interest efforts in shaping the emerging National Information Infrastructure, believes that communications in the public interest, including the effort to connect all Americans to basic communications systems, is essential to a strong democracy. Benton's mission is to realize the social benefits made possible by the public interest use of communications. Benton bridges the worlds of philanthropy, community practice, and public policy. It develops and provides effective information and communication tools and strategies to equip and engage individuals and organizations in the emerging digital communications environment. Over the past two years, the Benton Foundation has commissioned a number of research papers on the subject of universal service and now hosts the World Wide Web's most comprehensive library of universal service and access documents.³

II. Petitioners Are Unlikely To Succeed On The Merits: Discounts For Schools, Libraries, And Health Care Providers Are Consistent With The Telecommunications Act of 1996

Petitioners claim that the Commission's decision to support inside wiring, information services

³ See URL <http://www.benton.org/Uniserv/>

and other non-telecommunications services⁴ violates Sections 254(c)(3), (h)(1)(B), and (h)(2)(A) of the Telecommunications Act of 1996.⁵ Benton, *et al.* disagrees with the Petitioners. The plain language of Section 254(h)(2)(A) clearly directs the Commission "to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and *information services* for all public and nonprofit elementary and secondary school *classrooms*, *health care providers*, and *libraries*" (emphasis added). Similarly, in Section 706(a), the Commission and State regulatory commissions are charged to "encourage the development on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and *classrooms*)" (emphasis added).

The report language that accompanies the Act is fully consistent with this understanding. The Joint Explanatory Statement of the Conference Committee states, in relevant part:

New subsection (h) of section 254 is intended to ensure that health care providers for rural areas, elementary and secondary school *classrooms*, and libraries have affordable access to modern telecommunications services that will enable them to provide medical and educational services to all parts of the Nation.

The ability of K-12 *classrooms*, libraries, and rural health care providers to obtain access to advanced telecommunications services is critical to ensuring that these services are available on a universal basis. (104th Congress, 2d Session, Report 104-458 at 132, emphasis added.)

In each case, it is the plain intent of Congress to connect classrooms, not just to reach the school

⁴ See Order at ¶¶ 424-607.

⁵ See Petition at p. 9

house door. In light of the plain language of the statute, there can be no presumption that Petitioners will succeed on the merits on review.

III. Discounts For Schools, Libraries, And Health Care Providers Are Not Burdensome To Petitioners

The Order is not burdensome to the Petitioners. By contrast, this Order and the annual fund it creates empowers a previously underserved community of telecommunications users to purchase services *at market prices*.⁶ Providers will be fully reimbursed for services provided with a combination of eligible entities' resources and the Commission's annual fund.

There is no evidence that petitioners will suffer irreparable harm without a stay. No funds have been collected for or distributed to schools or libraries under the Commission's Universal Service Order. Nor will any funds be collected or distributed until January 1998. To date, there have been no applications by eligible schools and libraries to use funds for non-telecommunications services.

IV. Schools and Libraries Will Be Harmed By A Stay By Delaying Required Preparation By These Entities

Petitioners argue that schools and libraries will benefit from a stay⁷ by preventing them from

⁶ See Order at ¶¶484-485.

⁷ See Petition at p.29.

entering contracts based on discounts they will not receive. In fact, a stay will have no effect on these entities entering into such contracts and will delay required preparation by these entities.

The Petitioners' arguments imply that schools and libraries are on the brink of signing contracts relying on discounts that a successful appeal may alter and/or limit. In fact, no administrator has been named for the fund that will provide discounts. No formal application process is available to the eligible entities as of yet. Following procedures outlined in the Order,⁸ schools and libraries can not yet post their technology plans nor receive bids on their telecommunications needs. There is no fear of them entering contracts that they will not be able to honor.

A stay could halt much needed preparation in schools and libraries. The Commission's Order requires institutional applicants to perform a technology inventory/assessment that includes a review of available computer equipment, software, and maintenance equipment, as well as internal connections, training of relevant staff, and the institution's electrical system.⁹ A stay of the Commission's Order could confuse reviewers and stall the assessments needed for schools and libraries to make the most effective and efficient use of the discounts envisioned by Telecommunications Act of 1996.

⁸ See Order at ¶¶570-580.

⁹ Order at ¶¶572-573

V. Lifeline Customers Would Be Harmed By A Stay Of The Commission's "No Disconnect/Deposit Rules"

The Telecommunications Act of 1996 charges the Commission to target low-income consumers as recipients of support in one of the universal service principles:

- Access in rural and high-cost areas. Consumers in every region -- including low-income consumers and those in rural areas -- should have access to telecommunications and information services at costs reasonably comparable to rates charged in urban areas.

To meet the intent of Congress, the Commission has required local telephone providers to offer discounted, "Lifeline," services to low-income households in order to be determined carriers eligible for universal service benefits.¹⁰ The Commission has also prohibited carriers from disconnecting Lifeline customers when they are unable to pay for toll charges.¹¹

A stay would harm these intended beneficiaries by retaining a barrier to subscribership that some consumers cannot afford (deposits), and perpetuating a cycle of losing subscribers due to an inability to pay for toll services.

¹⁰ Order at ¶134.

¹¹ Order at ¶390.

A recent study by Schement and Mueller¹² points out that no disconnect rules are an important factor in advancing universal service goals. One of the study's key findings is that "most marginal users are driven off the network by usage-related costs rather than access-related costs."¹³ The majority of households without telephone service once had it, but were forced off the network due to inability to pay toll charges.¹⁴ For too many of those who fall off networks, subscribership is an on-again, off-again relationship.

Benton, *et al.* believes no disconnection/deposit rules to be consistent with the Act's general considerations of universal service because these services:

- are essential to the education, health, and safety of these consumers by helping to establish and guarantee continuous connections to public schools, health care providers, and emergency services;
- are already being deployed in public telecommunications networks by telecommunications carriers; and

¹² Schement, Jorge Reina and Milton Mueller. *Universal Service from the Bottom Up: A Profile Of Telecommunications Access In Camden, New Jersey*. Research performed for Bell Atlantic by Rutgers University Project On Information Policy. Available on the World Wide Web at URL <http://ba.com/reports/rutgers/ba-report.html>

¹³ *Ibid.*

¹⁴ Federal Communications Bureau, *Preparation for Addressing Universal Service Issues: A Review of Interstate Support Mechanisms*. February 1996.

- are consistent with the public interest, convenience, and necessity to connect all Americans to telecommunications networks.

V. Conclusion

In light of the agreements noted above, a stay would not be in the public interest. The Petition fails on all four points of the test established by *Holiday Tours*:

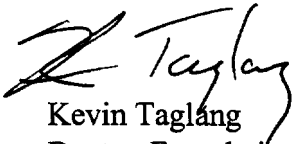
- (1) The stay is not likely to succeed on the merits on review as the Order is consistent with the Telecommunications Act of 1996.
- (2) The Petitioners will not suffer irreparable injury absent a stay. Provisions for discounts for schools and libraries will not go into effect until January 1, 1998.
- (3) A stay will harm interested parties by halting required preparations by schools and libraries and by perpetuating barriers to subscribership for low-income consumers.
- 4) A stay would not be in the public interest as it would put at risk the efforts to connect institutions and individuals targeted for support. Provisions for schools, libraries and health care providers are supported by the Congress, the Administration, the Commission, and the Federal-State Joint Board on Universal Service. To date, 20 states have also approved the discount matrix adopted by the Commission. A stay will only confuse technology planners in these institutions as they prepare assessments and inventories of their telecommunications assets and

needs. A stay will also prevent raising subscribership in the households least likely to be connected to essential telecommunications networks.

Benton, *et al.* asks that the Commission order that the joint petition for a stay of the Universal Service Order by Southwestern Bell Telephone Company and Pacific Bell/Nevada Bell be denied.

Respectfully submitted,

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